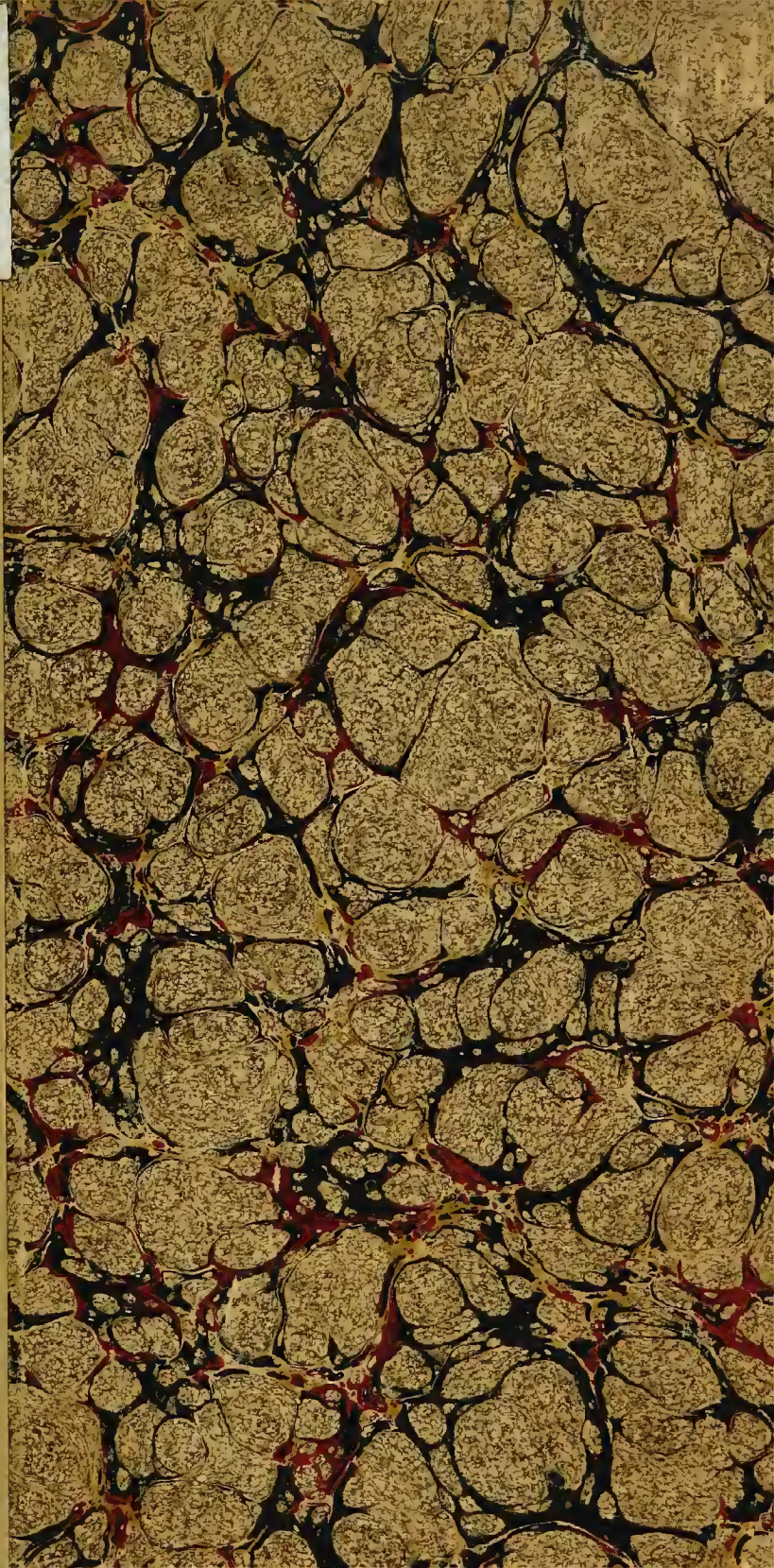
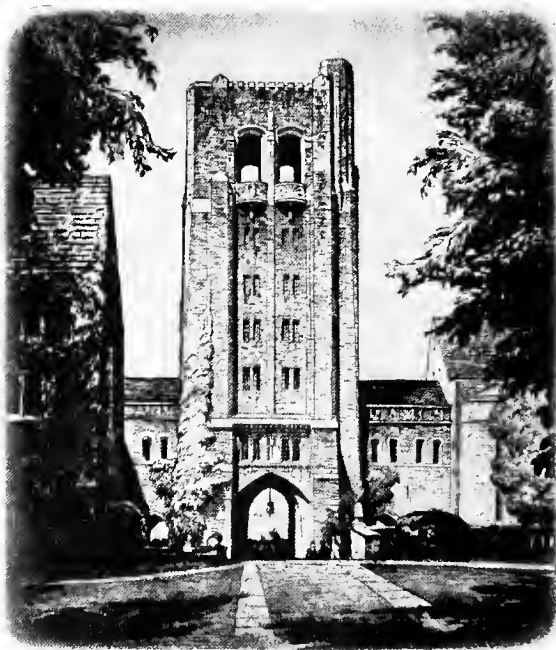


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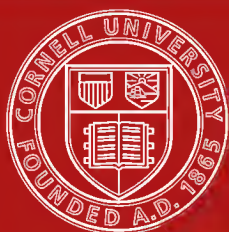
QUASI-CONTRACTS — SYNOPSIS AND
SELECTED CASES.

E. H. WOODRUFF.

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QUASI-CONTRACTS—SYNOPSIS AND SELECTED CASES.¹

E. H. WOODRUFF.

I.

RECOVERY UPON A RECORD.

- (K. T. p. 16.)
1. *Bank v. Vanvoorhis*, 6 S. D. 548 ; 62 N. W. 378.
 2. *State v. McGuire*, 42 Minn. 27 ; 43 N. W. 687 (last ¶ of opinion).
 3. *Bodine v. Commonwealth*, 24 Pa. St. 69 (2d ¶ of opinion).

II.

RECOVERY UPON A STATUTORY, OR OFFICIAL, OR CUSTOMARY DUTY. (K. T. pp. 16-19.)

4. *Wood v. Ayres*, 39 Mich. 345 ; 33 A. R. 396. (Upon the 2d point).
5. *Augner v. Mayor*, 14 App. D. 461.
6. *Willard v. Co.*, 48 Hun, 402 ; 16 N. Y. S. R. 497 ; 1 N. Y. Suppl. 588. (Judge Learned's opinion).
7. *Wood v. R'y*, 32 Wis. 398.
8. *Dickinson v. Winchester*, 4 Cush. 114 ; 50 A. D. 760.
9. *Nelson v. Kerr*, 59 N. Y. 224.
10. *Bailey v. Butterfield*, 14 Me. 112.

III.

RECOVERY UPON THE DOCTRINE THAT A PERSON SHALL NOT BE ALLOWED TO ENRICH HIMSELF UNJUSTLY AT THE EXPENSE OF ANOTHER. (K. T. pp. 19-25.)

A. Considered with reference to the law of true contract.

I. In general.

11. *Columbus v. Gaffney*, 65 Oh. 104 ; 61 N. E. 152.
12. *Eddy v. Smith*, 13 Wend. 489.

¹ The abbreviation K. T. refers to Keener's *Treatise on the Law of Quasi-Contracts* ; K. refers to Keener's *Cases on Quasi-Contracts*.

II. Where there is no agreement through the process of offer and acceptance.

a. *Benefits conferred without request.*

i. Intentionally. (K. T. Ch. vii.)

13. *Patterson v. Patterson*, 59 N. Y. 574 ; 17 A. R. 384.
14. *Gleason v. Warner*, 78 Minn. 405 ; 81 N. W. 206.
15. *Cunningham v. Reardon*, 98 Mass. 538 ; 96 A. D. 670.
16. *Quin v. Hill*, 4 Demarest, 69.
17. *Savage v. McCorkle*, 17 Ore. 42 ; 21 Pac. 444 (3d point).
18. *Forsyth v. Ganson*, 5 Wend. 558 ; 21 A. D. 241.
19. *Earle v. Coburn*, 130 Mass. 596 ; 2 K. 281.
20. *Chase v. Corcoran*, 106 Mass. 286 ; 2 K. 276.
21. *Beckwith v. Frisbie*, 32 Vt. 559.
22. *Zottman v. San Francisco*, 20 Cal. 96, 107 ; 81 A. D. 96.
23. *Bartholomew v. Jackson*, 20 Johns. 28 ; 11 A. D. 237 ; 2 K. 276 ; H. & W. 14.
24. *Manhattan Fire Alarm Co. v. Weber*, 22 Misc. 729 ; 50 N. Y. S. 42.
25. *Barnes v. Shoemaker*, 112 Ind. 512 ; 14 N. E. 367.
26. *Boulton v. Jones*, 2 H. & N. 564 ; 27 L. J. R. 117 ; 2 K. 268.
27. *United States v. Pac. R. R.* 120 U. S. 227 ; 2 K. 336.
28. *Brandner v. Krebbs*, 54 Ill. App. 652. (For other cases, besides this case, upon exceptions of necessity, see the topics, *Liability of Husband, Infant, Insane Person, and Parent, for necessities*, in *Woodruff's Cases on Domestic Relations and Persons*. See also § 231 of *Bishop on Contracts*.)

ii. Unintentionally.

Improvements put upon property of another by mistake. (K. T. Ch. viii, § 3.)

29. *Williams v. Gibbs*, 20 How. (U. S) 535 ; 2 K. 300.
30. *Parsons v. Moses*, 16 Ia. 440.
31. *Thomas v. Evans*, 105 N. Y. 601 ; 59 A. R. 519.
32. *Bryant v. Clark*, 45 Vt. 483.
33. *Isle Royal Mining Co. v. Hertin*, 37 Mich. 332 ; 26 A. R. 520 ; 2 K. 319.
34. *Gaskins v. Davis*, 115 N. C. 85 ; 20 S. E. 188 ; 44 A. S. R. 439 ; 25 L. R. A. 813.

Money paid to use of defendant to prevent sale of property. (K. T. Ch. ix, § 1.)

35. *Irvine v. Angus*, 93 Fed. 629 ; 35 C. C. A. 501.
36. *Nichols v. Bucknam*, 117 Mass. 488.

Money paid to use of defendant to discharge obligation of defendant. (K. T. Ch. ix, § 2.)

37. Ticonic Bank v. Smiley, 27 Me. 225 ; 46 A. D. 593.
38. Sargent v. Currier, 49 N. H. 310 ; 6 A. R. 524.
39. Van Santen v. Oil Co. 81 N. Y. 171.
40. McGhee v. Ellis, 4 Litt. (Ky.) 244 ; 14 A. D. 124.
41. Calvert v. Aldrich, 99 Mass. 74 ; 96 A. D. 693 ; Finch's Cases on Prop. 973.
42. Norton v. Coons, 3 Denio 130, (later report in 6 N. Y. 33 need not be read.)
43. Norris v. Churchill, 20 Ind. App. 668 ; 51 N. E. 104.
44. Dedman v. Williams, 2 Ill. 154.

b. *Benefits conferred at request but in the absence of contract.*

i. As gratuity with knowledge of all the facts. (K. T. Ch. vi, § 1.)

45. Potter v. Carpenter, 76 N. Y. 157.
 46. Hewitt v. Anderson, 56 Cal. 476 ; 38 A. R. 65.
 47. Collyer v. Collyer, 113 N. Y. 442 ; 21 N. E. 114.
 48. Webster v. Drinkwater, 5 Greenl. 319 ; 17 A. D. 238.
 49. Fuller v. Mowry, 18 R. I. 424 ; 28 Atl. 606.
 50. Disbrow v. Durand, 54 N. J. L. 343 ; 33 A. S. R. 678 ; 24 Atl. 545. (Especially upon burden of proof.)
 51. Osier v. Hobbs, 33 Ark. 215.
 52. Lafontaine v. Hayhurst, 89 Me. 388 ; 36 Atl. 623 ; 56 A. S. R. 430.
 53. Thomas v. Shooting Club, 121 N. C. 238 ; 28 S. E. 293.
- ii. As gratuity, under mistake of material fact. (K. T. Ch. vi, § 2.)
54. Burrows v. Ward, 15 R. I. 346 ; 5 Atl. 500.
 55. Shepherd v. Young, 8 Gray 152 ; 69 A. D. 242.
 56. Urie v. Johnston, 3 Pen. & W. 212.
 57. Hickam v. Hickam, 46 Mo. App. 496.
 58. Abbot v. Freemont, 34 N. H. 432.
 59. Cooper v. Cooper, 147 Mass. 370 ; 9 A. S. R. 721 ; 2 K. 358.

c. *Mistake as to the terms of a contract.*

- 59a. McDonald v. Lynch, 59 Mo. 350.

III. Statute of Frauds—Contract unenforceable.

a. *Where the plaintiff in default relies upon the Statute of Frauds.* (K. T. Ch. iv, § 2 ; Ch. viii, § 2.)

60. Thomas v. Brown, L. R. 1 Q. B. D. 714 ; 35 L. T. R. 237 ; 24 W. R. 821 ; 2 K. 237.
61. Philbrook v. Belknap, 6 Vt. 383 ; 2 K. 243.
62. Abbott v. Draper, 4 Den. 51.
63. King v. Welcome, 5 Gray, 41 ; 2 K. 251.

64. *Hoskins v. Mitcheson*, 14 U. C. Q. B. 551; 2 K. 254.
 65. *In re Williams' Estate*, 106 Mich. 490; 64 N. W. 490.

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66. *Rainer v. Huddleston*, 4 Heisk. 223; 2 K. 306.
 67. *Farnam v. Davis*, 32 N. H. 302.
 68. *Gillet v. Maynard*, 5 Johns. 85; 2 K. 284; 4 A. D. 329.
 b. *Where the defendant in default relies upon the Statute of Frauds.* (K. T. Ch. v, § 2; Ch. viii, § 1.)
 69. *Miller v. Roberts*, 169 Mass. 134; 47 N. E. 585. (Opinion only.)
 70. *Gay v. Mooney*, 67 N. J. L. 27; 50 Atl. 596.
 71. *Smith v. Smith*, 28 N. J. L. 208; 78 A. D. 49; 1 K. 494.
 72. *Day v. R. R.*, 51 N. Y. 583; 1 K. 503.
 73. *Dix v. Marcy*, 116 Mass. 416; 1 K. 509.
 74. *Banker v. Henderson*, 58 N. J. L. 26; 32 Atl. 700.
 75. *Parker v. Tainter*, 123 Mass. 185; 1 K. 511.
 76. *Hawley v. Moody*, 24 Vt. 603; 1 K. 491.
 77. *Williams v. Bemis*, 108 Mass. 91; 11 A. R. 318; 1 K. 500.
 78. *Reynolds v. Reynolds*, 74 Vt. 463; 52 Atl. 1036.
 79. *Reed v. McConnell*, 133 N. Y. 425; 45 N. Y. S. R. 227.

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80. *Albea v. Griffin*, 2 Dev. & Bat. Eq. 9; 2 K. 290.
 81. *Mathews v. Davis*, 6 Humph. 324; 2 K. 297.
 82. *Miller v. Tobie*, 41 N. H. 84.
 83. *Shreve v. Grimes*, 4 Litt. (Ky.) 220; 14 A. D. 117; 2 K. 286.
 84. *Orear v. Botts*, 3 B. Mon. 360.
 85. *Smith v. Smith*, (case 71 above).
 86. *Smith v. Hatch*, 46 N. H. 146.

IV. Capacity of parties—Restoration of consideration or recovery for benefits conferred where the contract is void or voidable for lack of contractual capacity.

a. *Corporations.*

87. *Central Trans. Co. v. Pullman Co.* 139 U. S. 24; 11 Sup. Ct. 478, (on this point, head note and latter part of opinion).
 88. *Bath Gas Light Co. v. Claffy*, 151 N. Y. 24; 45 N. E. 390.

b. *Infants, Insane Persons.* (Discussed in the course on Persons.)

c. *Married Women.*

89. *Smout v. Ilbery*, 10 M. & W. 1; 12 L. J. Ex. 357; 1 K. 190.

- 90. Kneil v. Egleston, 140 Mass. 202; 2 K. 356.
- 91. Gwin v. Smurr, 101 Mo. 550; 14 S. W. 731.

V. Mistake.

a. *Recovery of money paid under mistake of fact.* (K. T. Ch. ii.)

i. General principles.

- 92. Wabaunsee Co. v. Walker, 8 Kan. 431.
- 93. Buffalo v. O'Malley, 61 Wis. 255; 50 A. R. 137.
- 94. Lemans v. Wiley, 92 Ind. 436.

Compromise or settlement. (K. T. p. 30 *et seq.*)

- 95. Troy v. Bland, 58 Ala. 197.
 - 96. McArthur v. Luce, 43 Mich. 435; 38 A. R. 204.
 - 97. Stuart v. Sears, 119 Mass. 143; 1 K. 300.
 - 98. Wheadon v. Olds, 20 Wend. 174; 1 K. 298.
 - 99. Rheel v. Hicks, 25 N. Y. 289.
 - 100. Riegel v. Ins. Co. 153 Pa. 134; 19 L. R. A. 166; 25 Atl. 1070.
 - 101. Sears v. Grand Lodge, 163 N. Y. 374; 57 N. E. 618.
- Effect of payor's knowledge or belief. (K. T. pp. 27, 31.)
- 102. Guild v. Baldrige, 2 Swan, 295.
 - 103. Windbiel v. Carroll, 16 Hun, 101.
 - 104. Nat. Life Ins. Co. v. Jones, 59 N. Y. 649. (Opinion in 1 T. & C. 466.)

Mistake, but not against conscience for defendant to retain. (K. T. pp. 43 *et seq.*)

- 105. Kingston Bank v. Eltinge, 66 N. Y. 625.
- 106. Levy v. Terwilliger, 10 Daly, 194.
- 107. Buel v. Boughton, 2 Den. 91; 1 K. 411.

Mistake, but recovery would throw loss upon defendant. (K. T. pp. 59 *et seq.*)

- 108. Grier v. Huston, 8 S. & R. 402; 11 A. D. 627.
- 109. Newall v. Tomlinson, L. R. 6 C. P. 405; 25 L. T. R. 382; 1 K. 458.
- 110. Corn Exch. Bank v. Bank, 91 N. Y. 74 (1st point).
- 111. Carson v. McFarland, 2 Rawle, 118; 19 A. D. 627.
- 112. Phetteplace v. Bucklin, 18 R. I. 297; 27 Atl. 211.
- 113. Walker v. Conant, 69 Mich. 321; 13 A. S. R. 391; 37 N. W. 292.

Mistake, but plaintiff negligent. (K. T. pp. 70 *et seq.*)

- 114. Appleton Bank v. McGillivray, 4 Gray 518; 64 A. D. 92.

Mistake, but defendant negligent. (K. T. pp. 71 *et seq.*)

- 115. Union Bank v. Bank, 3 Mass. 74.

Mistake and equal fault. (K. T. pp. 70 *et seq.*)

- 116. Koontz v. Bank, 51 Mo. 275.

- Burden of proof as to alteration of position. (K. T. pp. 73 *et seq.*)
117. Mayer v. New York, 63 N. Y. 455; 1 K. 283.
- Whether action contemplates recovery of *money*. (K. T. p. 139.)
118. Brundage v. Portchester, 102 N. Y. 494.
119. Tinslar v. May, 8 Wend. 561.
- Necessity of notice to or demand upon the defendant. (K. T. pp. 139 *et seq.*)
120. Gillett v. Brewster, 62 Vt. 312; 20 Atl. 105.
121. Sharkey v. Mansfield, 90 N. Y. 227; 43 A. R. 161.
- Interest on money paid by mistake. (K. T. pp. 154 *et seq.*)
122. Leach v. Vining, 18 N. Y. Supp. 822; 45 N. Y. S. R. 170.
(On this point only.)
- Mistake as to title of vendor. (K. T. pp. 125 *et seq.*)
123. Whittemore v. Farrington, 76 N. Y. 452.
124. Earle v. Bickford, 6 Allen, 549; 83 A. D. 651.
125. Phillips v. Hudson, 31 N. J. L. 143.
126. Moore v. Williams, 115 N. Y. 586; 12 A. S. R. 844; 22 N. E. 233.
127. Steele v. Sanchez, 80 Ia. 507; 45 N. W. 870.
128. Coolidge v. Brigham, 1 Met. 547.
- Overpayment by mistake—excess of contract rate. (K. T. p. 120.)
129. Calkins v. Griswold, 11 Hun, 208.
130. Holtz v. Schmidt, 59 N. Y. 253.
- Overpayment by mistake—the contract based on mistake. (K. T. p. 122.)
131. Howes v. Barker, 3 Johns. 506; 3 A. D. 526.
132. Paine v. Upton, 87 N. Y. 327; 41 A. R. 371.
- Mistake as to existence of subject matter of contract. (K. T. pp. 130 *et seq.*)
133. Wood v. Sheldon, 42 N. J. L. 421; 36 A. R. 523.
134. Martin v. McCormick, 8 N. Y. 331.
135. Moore v. DesArts, 1 N. Y. 359.
136. Brewster v. Burnett, 125 Mass. 68; 28 A. R. 203.
- Mistake as to the genuineness of negotiable instrument. (K. T. pp. 154 *et seq.* note.)
137. Bank v. Bank, 10 Vt. 141; 33 A. D. 188.
138. Dedham Bank v. Bank, 177 Mass. 392; 83 A. S. R. 286; 59 N. E. 62.
139. Germania Bank v. Boutell, 60 Minn. 189; 62 N. W. 327; 51 A. S. R. 519 (from 3d ¶ of prevailing opinion to end of that opinion.)
140. Wilson v. Alexander, 4 Ill. 392.
141. Riverside Bank v. Bank, 74 Fed. 276; 38 U. S. App. 674.
142. Bank of Commerce v. Union Bank, 3 N. Y. 230; 1 K. 236.

Money lent under mistake as to agent's authority to borrow. (K. T. pp. 330 *et seq.*)

143. Kelly v. Lindsey, 7 Gray, 287 ; 1 K. 202.

144. White River Township v. Dorrell, 26 Ind. App. 538 ; 59 N. E. 867.

145. First Church v. Caughey, 85 Pa. 271 ; 1 K. 205.

146. Billings v. Monmouth, 72 Me. 174 ; 1 K. 209.

147. Fay v. Slaughter, 194 Ill. 157 ; 62 N. E. 592.

148. Reid v. Rigby Co. [1894] 2 Q. B. 40 ; 10 T. L. R. 418 ; 63 L. J. (C. L.) 451.

Mistake as to part of the consideration. (K. T. pp. 124, 130).

149. Rand v. Webber, 64 Me. 191.

150. Smart v. Gale, 62 N. H. 62

b. *Recovery of money paid under mistake of law.* (K. T. pp. 85 *et seq.*)

151. Clarke v. Dutcher, 9 Cow. 674 ; 1 K. 114.

152. Fairbanks v. Mann, 19 R. I. 499 ; 34 Atl. 1112.

153. Doll v. Earle, 59 N. Y. 638.

154. Frederick v. Donglass, 96 Wis. 411 ; 71 N. W. 798. (Judge Winslow's opinion.)

155. Camden v. Green, 54 N. J. L. 591 ; 33 A. S. R. 686 ; 25 Atl. 357.

156. Cahaba v. Burnett, 34 Ala. 400.

157. City of Helena v. Dwyer, 65 Ark. 155 ; 45 S. W. 349.

158. Buckley v. N. Y. 30 App. D. 463 ; 52 N. Y. Suppl. 452.

159. Pitcher v. Plank Road, 10 Barb. 436 ; 1 K. 162.

160. Hemphill v. Moody, 64 Ala. 468 ; 1 K. 167.

161. Needles v. Burk, 81 Mo. 569.

Mistake as to foreign law.

162. Haven v. Foster, 9 Pick. 112 ; 19 A. D. 353 ; 1 K. 123.

Money paid by mistake to officer of the court.

163. Gillig v. Grant, 23 App. D. 596 ; 49 N. Y. Supp. 78.

c. *Recovery for benefits conferred under mistake as to the existence of a contract.* (K. T. Ch. vi, § 3.)

164. Van Dusen v. Blum, 18 Pick. 229 ; 29 A. D. 582 ; 1 K. 197.

165. Bond v. Aitkin, 6 W. & S. 165 ; 40 A. D. 550 ; 1 K. 199.

166. Turner v. Webster, 24 Kan. 38 ; 36 A. R. 251 ; 2 K. 350.

167. Concord Co. v. Ferrin, 71 N. H. 33 ; 51 Atl. 283 ; 93 A. S. R. 496.

168. *In re Northumberland Ave. Hotel Co.* L. R. 33 Ch. D. (C. A.) 16 ; 54 L. T. 777.

169. Sherman v. Kitsmiller, 17 S. & R. 45.

170. Hart v. Georgia R. R. 101 Ga. 188 ; 28 S. E. 637.

VI. Duress.

- a. *Duress of Property.* (K. T. Ch. xi, § 1.)
- 171. Chase v. Dwinal, 7 Greenl. 134 ; 20 A. D. 352.
 - 172. Brumagim v. Tillinghast, 18 Cal. 265 ; 79 A. D. 176.
 - 173. Harmony v. Bingham, 12 N. Y. 99 ; 62 A. D. 142.
 - 174. Scholey v. Mumford, 60 N. Y. 498 ; 2 K. 558.
 - 175. De La Cuesta v. Ins. Co. 136 Pa. 62 ; 20 Atl. 505.
 - 176. Joannin v. Ogilvie, 49 Minn. 564 ; 32 A. S. R. 581 ; 52 N. W. 217.
 - 177. Richmond v. Steamboat Co., 87 N. Y. 240.
 - 178. Van Dyke v. Wood, 60 App. D. 208 ; 70 N. Y. Supp. 324.
- b. *Money paid to avoid injury to business.* (K. T. Ch. xi, § 2.)
- 179. Panton v. Water Co., 50 Minn. 175 ; 36 A. S. R. 635 ; 52 N. W. 527.
 - 180. Guetzkow v. Breese, 96 Wis. 591 ; 65 A. S. R. 83 ; 72 N. W. 45.
 - 181. Carew v. Rutherford, 106 Mass. 1 ; 8 A. R. 287 ; 2 K. 550.
 - 182. Solinger v. Earle, 82 N. Y. 393.
 - 183. Regan v. Baldwin, 126 Mass. 485 ; 30 A. R. 689.
- c. *Interest paid on usurious contract.* (K. T. Ch. xi, § 3.)
- 184. Wheaton v. Hibbard, 20 Johns. 2907, 11 A. D. 284.
 - 185. Marvin v. Mandell, 125 Mass. 562.
 - 186. Cummings v. Knight, 65 N. H. 202 ; 23 Atl. 148.
- d. *Money paid to induce performance of a duty.* (K. T. Ch. xi, § 4.)
- 187. Cook v. R. R., 81 Ia. 551 ; 25 A. S. R. 512.
 - 188. Killmer v. R. R., 100 N. Y. 395 ; 53 A. R. 194 ; 3 N. E. 293.
 - 189. Pingree v. Gas Co., 107 Mich. 156 ; 65 N. W. 6.
 - 190. Potomac Coal Co. v. R. R., 38 Md. 226.
 - 191. Amer. SS. Co. v. Young, 89 Pa. 186 ; 33 A. R. 748.
 - 192. Monongahela Co. v. Wood, 194 Pa. 47 ; 45 Atl. 73.
 - 193. Chicago & Alton R. R. v. Coal Co., 79 Ill. 121.
- e. *Duress of person.* (K. T. Ch. xi, § 5.)
- 194. Galusha v. Sherman, 105 Wis. 263 ; 81 N. W. 495 ; 47 L. R. A. 417.
 - 195. Puckett v. Roquemore, 55 Ga. 235.
 - 196. Adams v. Bank, 116 N. Y. 606 ; 15 A. S. R. 447.
 - 197. Haynes v. Rudd, 102 N. Y. 372 ; 55 A. R. 815.

VII. Illegal contract.

- a. *Plaintiff in default.* (K. T. Ch. iv, § 4.)
- 198. Knowlton v. Spring Co., 57 N. Y. 518.

- 199. Spring Co. v. Knowlton, 103 U. S. 49.
- 200. Tracy v. Talmadge, 14 N. Y. 162; 67 A. D. 132; 2 K. 30.
- 201. Harse v. Assur. Co. [1904], 1 K. B. 558; 20 T. L. R. 264; 90 L. T. R. 245.
- 202. White v. Franklin Bank, 22 Pick 181.
- 203. Stacy v. Foss, 19 Me. 335; 36 A. D. 755.
- 204. Arnot v. Coal Co., 68 N. Y. 558; 23 A. R. 190.
- 205. Skinner v. Henderson, 10 Mo. 205.

b. *Defendant in default.* (K. T. Ch. v, § 1.)

- 206. Troewert v. Decker, 51 Wis. 46; 37 A. R. 808.
- 207. Liness v. Hesing, 44 Ill. 113; 92 A. D. 155.
- 208. Morgan v. Groff, 5 Den. 364; 49 A. D. 273. (Overruled in 4 Barb. 524.)
- 209. Thompson v. Williams, 58 N. H. 248; 2 K. 59.
- 210. Brown v. Timmany, 20 Oh. 82.
- 211. Smith v. Bromley, 2 Doug. 696; 2 K. 507.
- 212. Hentig v. Staniforth, 5 M. & S. 122; 2 K. 5.
- 213. Smart v. White, 73 Me. 332; 40 A. R. 356.
- 214. Louisiana v. Wood, 102 U. S. 294.
- 215. Smith v. Blachley, 188 Pa. 550; 68 A. S. R. 887; 41 Atl. 619.
- 216. McMullen v. Hoffman, 174 U. S. 639; 19 Sup. Ct. 839.
- 217. Lemon v. Grosskopf, 22 Wis. 427; 99 A. D. 58.
- 218. Baldwin Bros. v. Potter, 46 Vt. 402; Huffcut's Cas. Agency, 186.

VIII. Breach of contract.

a. *Breach by plaintiff.* (K. T. Ch. iv, § 1.)

- 219. Feeney v. Bardsley, 66 N. J. L. 239; 49 Atl. 443.
- 220. Norwood v. Lathrop, 178 Mass. 208; 59 N. E. 650.
- 221. Parcel v. McComber, 11 Neb. 209; s. c. note 35 A. R. 476.
- 222. Catlin v. Tobias, 26 N. Y. 217; 84 A. D. 183; 2 K. 169.
- 223. Saunders v. Short, 58 U. S. App. 689; 86 Fed. 225.
- 224. Steeples v. Newton, 7 Ore. 110; 33 A. R. 705.
- 225. Hildebrand v. Art Co., 109 Wis. 171; 53 L. R. A. 826; 85 N. W. 268 (only 7 c of the head-note and corresponding place in the opinion).
- 226. Walsh v. Co. 88 App. D. 477.
- 227. Kelly & Bragg v. Bradford, 33 Vt. 35.

b. *Breach by defendant.* (K. T. Ch. v, § 4.)

- 228. Derby v. Johnson, 21 Vt. 17; 2 K. 113; H. & W. 568.
- 229. Wellston Coal Co. v. Franklin Co. 57 Oh. 182; 48 N. E. 888.
- 230. Missouri Co. v. Carmody, 72 Mo. App. 534 (only the point on p. 538).

- 231. *Porter v. Dunn*, 61 Hun. 310 ; 40 N. Y. S. R. 776, 16 N. Y. Suppl. 77.
- 232. *Hudson v. Hudson*, 87 Ga. 678 ; 27 A. S. R. 270 ; 13 S. E. 583.
- 233. *De Montague v. Bacharach*, 181 Mass. 256 ; 63 N. E. 435.
- 234. *Skudera v. Ins Co.* 17 Misc. 367 ; 39 N. Y. Supp. 1059.

IX. Impossibility of performance. (K. T. Ch. iv, § 3 ; Ch. v, § 3.)

- 235. *Appleby v. Myers*, L. R. 2 C. P. 651 ; 36 L. J. C. P. 331 ; 16 L. T. 669 ; 2 K. 192.
- 236. *Siegel, Cooper & Co. v. Eaton & Prince Co.*, 165 Ill. 550 ; 46 N. E. 449.
- 237. *Huyett Co. v. Chicago Co.*, 167 Ills. 233 ; 59 A. S. R. 272 ; 47 N. E. 384.
- 238. *Butterfield v. Byron*, 153 Mass. 517 ; 25 A. S. R. 654 ; 12 L. R. A. 571 ; 27 N. E. 667.
- 239. *Jones v. Judd*, 4 N. Y. 411 ; 2 K. 215.
- 240. *Wolf v. Howes*, 20 N. Y. 197 ; 75 A. D. 388.
- 241. *Lord v. Wheeler*, 1 Gray 282 ; 2 K. 218.
- 242. *Angus v. Scully*, 176 Mass. 357 ; 79 A. S. R. 318 ; 57 N. E. 674 ; 49 L. R. A. 562.
- 243. *Niblo v. Binsse*, 3 Abb. Ct. App. 375 ; 1 Keyes, 476 ; 2 K. 224.
- 244. *Griggs v. Austin*, 3 Pick. 20 ; 15 A. D. 175 ; 1 K. 537.
- 245. *Shear v. Wright*, 60 Mich. 159.
- 246. *Pinkham v. Libby*, 93 Me. 575 ; 49 L. R. A. 693 ; 45 Atl. 823.
- 247. *Chandler v. Webster* [1904], 1 K. B. 493 ; 90 L. T. R. 217 ; 52 W. R. 290 ; 20 T. L. R. 222.
- 248. *Elliott v. Crutchley* [1904], 1 K. B. 565 ; 20 T. L. R. 286.

B. Considered with reference to the law of tort.

I. Waiver of tort. (K. T. Ch. iii.)

a. *In general.* (K. T. pp. 159, 160.)

- 249. *Ware v. Percival*, 61 Me. 391 ; 14 A. R. 564.
- 250. *Cooper v. Cooper*, (case 59 above.)

Must be unjust enrichment. (K. T. pp. 160 *et seq.*)

- 251. *Patterson v. Prior*, 18 Ind. 440 ; 81 A. D. 367.
- 252. *Thompson v. Bronk*, 126 Mich. 455 ; 85 N. W. 1084.
- 253. *Limited Inv. Co. v. Assoc.* 99 Wis. 54 ; 74 N. W. 633.
- 254. *Brundred v. Rice*, 49 Oh. 640 ; 34 A. S. R. 589 ; 32 N. E. 169.

Must plaintiff's estate have been diminished? (K. T. pp. 163 *et seq.*)

255. *Phillips v. Homfray*, 24 Ch. D. 439; 49 L. T. R. 5; 32 W. R. 6; 1 K. 43.
256. *Schillinger v. U. S.*, 155 U. S. 163; 15 Sup. Ct. 85.
257. *McSorley v. Faulkner*, 18 N. Y. Suppl. 460; 45 N. Y. S. R. 678.
258. *Brown v. Brown*, 40 Hun, 418.
- Amount received must be ascertainable. (K. T. p. 173.)
259. *Budd v. Hiler*, 3 Dutch. 43. (27 N. J. L.)
- Must money have been received? (K. T. p. 173.)
260. *Kidney v. Persons*, 41 Vt. 386; 98 A. D. 595.
- Measure of recovery. (K. T. p. 183.)
261. *West. Assur. Co. v. Towle*, 65 Wis. 247; 26 N. W. 104.
- Joint tortfeasors. (K. T. p. 208.)
262. *Terry v. Muenger*, 121 N. Y. 161; 18 A. S. R. 803; 24 N. E. 272.
- Joint injured parties.
263. *Gilmore v. Wilbur*, 12 Pick. 120; 22 A. D. 410.
- b. *Particular applications.*
- Fraud.
264. *Crown Cycle Co. v. Brown*, 39 Ore. 285; 64 Pac. 451.
- Money procured wrongfully and passed to innocent holder.
265. *Newhall v. Wyatt*, 139 N. Y. 452; 54 N. Y. S. R. 708; 34 N. E. 1045; 36 A. S. R. 712.
266. *Nassau Bank v. Bank*, 159 N. Y. 456; 54 N. E. 66.
267. *Alabama Bank v. Rivers*, 116 Ala. 1; 67 A. S. R. 95; 22 So. 580.
268. *State Bank v. Payne*, 56 Ill. App. 147.
269. *Hiudmarch v. Hoffman*, 127 Pa. 284; 4 L. R. A. 368; 14 A. S. R. 842; 18 Atl. 14.
270. *Zink v. Express Co.* 72 Ill. App. 605.
- Trespass to goods.
271. *Fanson v. Linsley*, 20 Kan. 235 (only p. 239).
- Trespass to lands.
272. *Hurley v. Lameraux*, 29 Minn. 138; 12 N. W. 447.
273. *National Co. v. Bush*, 88 Pa. 335.
274. *Downs v. Finnegan*, 58 Minn. 112; 59 N. W. 981; 49 A. S. R. 488.
275. *O'Conley v. Natchez*, 1 S. & M. 31; 40 A. D. 87.
- Official fees received by usurper.
276. *Glascok v. Lyons*, 20 Ind. 1; 83 A. D. 299.
277. *Stuhr v. Curran*, 44 N. J. L. 181; 43 A. R. 353.
- II. *Contribution between joint wrongdoers.* (K. T. pp. 408, 409.)
278. *Churchill v. Holt*, 131 Mass. 67; 41 A. R. 191.
279. *Armstrong Co. v. Clarion Co.* 66 Pa. St. 218; 5 A. R. 368.

C. Considered with reference to obedience to legal mandate.

I. Compulsion by legal mandate.

a. *Recovery of money paid after action begun.* (K. T. Ch. x, § 1.)

280. *Moore v. Fulham* [1895], 1 Q. B. 399; 43 W. R. 277; 71 L. T. 862.

281. *Chandler v. Sanger*, 114 Mass. 364; 19 A. R. 367; 2 K. 385.

282. *Turner v. Barber*, 66 N. J. L. 496; 49 Atl. 676.

283. *Gould v. McFall*, 118 Pa. 455; 4 A. S. R. 606; 12 Atl. 336.

284. *Walker v. Ames*, 2 Cow. 428.

284a. *Teasedale v. Stoller*, 133 Mo. 645; 34 S. W. 873.

285. *Fuller v. Shattuck*, 13 Gray 70; 74 A. D. 622.

286. *People's Bank v. Heath*, 175 Mass. 131; 78 A. S. R. 481; 55 N. E. 807.

b. *Recovery of money paid to prevent sale under process.* (K. T. Ch. x, § 2.)

287. *Jersey City v. Riker*, 9 Vroom 225; 20 A. R. 386.

288. *Union Ins. Co. v. Alleghany*, 101 Pa. 250.

289. *Rumford Works v. Ray*, 19 R. I. 456; 34 Atl. 814.

290. *Peyser v. Mayor*, 70 N. Y. 497; 26 A. R. 624.

291. *Preston v. Boston*, 12 Pick. 7; 2 K. 406.

292. *Parcher v. Marathon Co.*, 52 Wis. 388; 38 A. R. 745; 2 K. 429.

293. *Whitney v. Port Huron*, 88 Mich. 268; 26 A. S. R. 291.

294. *Trimmer v. Rochester*, 130 N. Y. 401; 29 N. E. 746.

295. *Matter of Adams*, 154 N. Y. 619; 49 N. E. 144.

296. *Matter of McCue*, 162 N. Y. 235; 56 N. E. 627.

297. *Lauman v. Des Moines*, 29 Ia. 310.

II. Mistake as to legal mandate. (See Mistake, A. 5, *supra*.)

D. Considered with reference to equity jurisdiction.

298. *Adair v. Winchester*, 7 G. & J. (Md.) 114.

299. *Ramsdell v. Butler*, 60 Me. 216.

300. *Roberts v. Ely*, 113 N. Y. 128; 22 N. Y. S. R. 185; 20 N. E. 606.

301. *Turner v. Althaus*, 6 Neb. 55 (1st point only.)

302. *Amer. Bank v. Thalheimer*, 29 App. D. 170; 51 N. Y. S. 813.

303. *Minchin v. Minchin*, 157 Mass. 265; 32 N. E. 164.

304. *Williams v. Gibbes* (case 29, above.)

